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IN THE COURT OF APPEALS OF INDIANA

MICHAEL S. SCHAEFER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A05-0707-CR-375
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable Randy Coffey, Magistrate
Cause No. 76D01-0503-FC-248

DECEMBER 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Michael S. Schaefer ("Schaefer") is appealing from the denial of his motion to correct an erroneous sentence.

We affirm.

ISSUE

The sole issue presented in this appeal is whether the trial court erred by denying Schaefer's motion to correct erroneous sentence.

FACTS AND PROCEDURAL HISTORY

Schaefer was serving a sentence on work release when he went to an auto dealer and asked to test-drive an automobile. Schaefer never returned the car nor did he return to the work release center.

Schaefer was charged with the Class D felony of auto theft, the Class C felony of escape, and as being a habitual offender. Schaefer entered a guilty plea to the charges and was sentenced to three years for the auto theft conviction, and eight years on the escape charge to be served concurrent with the auto theft conviction. The court enhanced the escape charge by eight years on the habitual offender finding, for an aggregate sentence of sixteen years executed. Schaefer had two felony theft convictions prior to this incident.

Schaefer filed a motion to correct an erroneous sentence, which was summarily denied by the trial court. Schaefer brings this appeal from the trial court's denial of his motion.

DISCUSSION AND DECISION

The correction of an erroneous sentence is governed by Ind. Code §35-38-1-15. A motion to correct erroneous sentence is a procedural mechanism which may be used to challenge a sentence that is erroneous on its face. *Fulkrod v. State*, 855 N.E.2d 1064, 1066 (Ind. Ct. App. 2006). If a claim requires consideration of proceedings before, during, or after trial, such claims may not be presented by way of a motion to correct erroneous sentence. *Id.* Such claims may be resolved by considering only the face of the judgment and the applicable statutory authority without reference to other matters in or extrinsic to the record. *Id.* Our Supreme Court has stated that the narrow confines of this procedure are to be strictly applied. *Id.*

We perceive Schaefer's argument to be as follows: Ind. Code §35-50-2-8(a) provides that a person may be sentenced as a habitual offender for any felony by alleging that the person has accumulated two prior unrelated felony convictions. Section (b)(3) of that statute says that a person may not be sentenced as a habitual offender if *all* of the following apply:

> (A) The offense is an offense under I.C. 16-42-19 (Indiana Legend Drug Act) or I.C. 35-48-4 (offenses relating to controlled substances).
>
> (B) The offense is not listed in section 2(b)(4) of this chapter.
>
> (C) The total number of unrelated convictions that the person has for [several drug related convictions not applicable to this appeal] does not exceed one.

A reading of Ind. Code §35-50-2-2(b)(4) reveals a list of felonies that may be considered in enhancing a sentence because the defendant is a habitual offender. Schaefer argues that theft is not listed in that section, and because theft convictions are not listed in Ind.

Code §35-50-2-2(b)(4) he cannot have his sentence enhanced as a habitual offender pursuant to Ind. Code §35-50-2-8(b)(3) because two of the three required sub-sections (A and C) are not present.

Therefore, after examining the argument made in Schaefer's motion to correct error, it is evident that the sentencing error Schaefer is alleging is not apparent on the face of the judgment. *Fulkrod*, 855 N.E.2d at 1066. The argument requires consideration of proceedings or matters not subject to the correction of an erroneous sentence.[1]

CONCLUSION

The trial court did not err by denying Schaefer's motion to correct erroneous sentence.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

[1] We would also observe that in our opinion Ind. Code §35-50-2-8(b)(3) has no application to this appeal and that Schaefer's argument ignores that part of the statute which only requires the State to prove two unrelated felony convictions.